

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DISTRICT**

IN RE: BLUE CROSS BLUE SHIELD	:	
ANTITRUST LITIGATION	:	Master File No. 2:13-CV-20000-RDP
MDL 2406	:	
	:	This document relates to:
	:	Subscriber Track cases

**MOTION OF THE SUBSCRIBER PLAINTIFFS TO FILE
THEIR FOURTH AMENDED CONSOLIDATED CLASS ACTION COMPLAINT**

Pursuant to Rule 15(a)(2) of the Federal Rules of Civil Procedure, the Subscriber Plaintiffs respectfully move this Court to allow them to amend and restate their Third Amended Consolidated Class Action Complaint (“TACC”) to conform the pleadings to the settlement agreement that has been reached with Defendants and that will be presented shortly to the Court for preliminary approval, to incorporate amendments from the underlying Alabama complaint that are being sought simultaneously with this amendment, and further, to update the list of proposed class representatives.¹ The Subscriber Plaintiffs’ proposed Fourth Amended Consolidated Class Action Complaint (“FACC”) is attached hereto as Exhibit A. The grounds for the proposed amendment are as follows:

¹ The Amended Scheduling Order’s deadlines for amendments to pleadings or the addition of parties applies by its terms only to the prioritized Alabama actions, and not to the Consolidated Class Action Complaint. Doc. 989. Moreover, Subscriber Plaintiffs reserved all rights in their TACC to add parties or amend the consolidated pleadings in non-prioritized actions as permitted and as appropriate. As Subscriber Plaintiffs noted in their TACC: “Consistent with this Court’s Order and instructions as well as the narrowed scope of the streamlined proceeding, Subscriber Plaintiffs reserve the right to, and in all likelihood will, identify further named plaintiffs, facts and/or claims from outside of Alabama at a time to be determined by the court in further proceedings, and particularly after Defendants’ defenses related to the filed-rate doctrine for non-Alabama states have been fully adjudicated. As discovery commences in the non-streamlined portion of the litigation against defendants other than Blue Cross Blue Shield of Alabama, Subscriber Plaintiffs also reserve the right to correct any deficiencies in the naming of the various Individual Blue Plan defendants.” TACC, Doc. 1082, at 8 of 475.

1. This Court is currently being asked to allow an amendment to the complaint in one of the prioritized Alabama cases, and the purpose of the amendment requested herein is to conform the governing Consolidated Complaint to those permitted amendments and thereby conform the allegations of the consolidated complaint to reflect the terms of the parties' proposed class action settlement,, and further, to withdraw one plaintiff presently named in the TACC as a proposed class representative,² to update the name of another proposed class representative named in the TACC,³ and to supplement the naming of all Blue Plan licensees.

2. Because the Amended Scheduling Order's deadlines for amending pleadings or adding parties applies by its terms only to the prioritized Alabama cases (Doc. 989), should the Court permit the separately requested amendments to one of the underlying complaints in the prioritized Alabama cases, consideration need be given here for purposes of the Consolidated Complaint only pursuant to Fed. R. Civ. P. 15(a)(2). That standard is readily met: "[A] party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2).

3. Here, the requirements of Rule 15(a)(2) are established first by Defendants' consent. Even absent such consent, the amendment should be allowed. Emphasizing the Rule's directive that leave should be "freely" given for the sake of justice, the Supreme Court in *Foman v. Davis*, 371 U.S. 178, 182 (1962) explained that it is particularly appropriate to allow amendments that "state an alternative theory for recovery," so that the plaintiff can "test his claim on the merits." *Id.* at 182. *See also, e.g., Hall v. United Insurance Company of America*, 367 F. 3d

² Named Florida plaintiff James Hoyer, P.A. has filed a Chapter 7 bankruptcy, is being liquidated, and a trustee has been appointed. Subscriber Plaintiffs accordingly wish to withdraw James Hoyer, P.A. as a proposed class representative in their Consolidated Complaint, without prejudice to such plaintiff's continuing claims or rights as a class member or individual plaintiff in its own underlying action.

³ Named Hawaii plaintiff Angel Vardas has married and is now known as Angel Foster.

1255, 1262 (11th Cir. 2004). Further, none of the factors that courts in the Eleventh Circuit have identified as justifying a denial of leave to amend are present. *See Bryant v. Dupree*, 252 F.3d 1161, 1163 (11th Cir. 2001) (a court may deny leave to amend (1) where there has been undue delay, bad faith, dilatory motive, or repeated failure to cure deficiencies by amendments previously allowed; (2) where allowing amendment would cause undue prejudice to the opposing party; or (3) where amendment would be futile) (citing *Foman*, 371 U.S. at 182)).

4. Further, courts routinely permit class action plaintiffs to amend their complaints in order to conform the pleadings to a settlement. *See generally Barnard v. CorePower Yoga LLC*, 2017 WL 3977384, at *1, n.1 (N.D. Cal. Sept. 11, 2017) (noting in an opinion granting preliminary approval of class action settlement that the court also “[grants] Plaintiff’s unopposed request to amend the complaint to conform with the settled claims in the settlement agreement”); *Altamirano v. Shaw Indus., Inc.*, No. 13-CV-00939-HSG, 2015 WL 4512372, at *1 (N.D. Cal. July 24, 2015) (granting preliminary approval of class action settlement and granting the corresponding “motion to amend the complaint for purposes of settlement”); *Chambery v. Tuxedo Junction Inc.*, 10 F. Supp. 3d 415, 418 (W.D.N.Y. 2014) (granting preliminary approval of settlement and granting leave to amend under Rule 15(a)(2) when the settlement expressly contemplating the filing of the amended complaint); *In re Currency Conversion Fee Antitrust Litig.*, 2006 WL 3247396, at *4 (S.D.N.Y. Nov. 8, 2006) (holding it was “in the interest of justice” to grant leave to amend the complaint to correspond to the class action settlement); *In re Nasdaq Market-Makers Antitrust Litig.*, 1997 WL 805062, at *7 (S.D.N.Y. Dec. 31, 1997) (granting a motion to amend the complaint for purposes of class action settlement).

5. Defendants have advised Subscribers’ Co-Lead Counsel that they will take no position with respect to the motion.

Wherefore, the Plaintiff herein respectfully request this Court to enter an Order allowing them to it to file the attached Fourth Amended Consolidated Class Action Complaint (Exhibit A hereto).

This the 30th day of October, 2020

/s/ David Boies
David Boies – ***Co-Lead Counsel***
BOIES, SCHILLER & FLEXNER LLP
333 Main Street
Armonk, NY 10504
Tel: (914) 749-8200
Fax: (914) 749-8200
dboies@bsflp.com

Charles J. Cooper – ***Co-Chair, Written Submissions Committee***
COOPER & KIRK, PLLC
1523 New Hampshire Avenue NW
Washington, DC 20036
Tel: (202) 220-9600
Fax: (202) 220-9601
ccooper@cooperkirk.com

Respectfully submitted,

/s/ Michael D. Hausfeld
Michael D. Hausfeld – ***Co-Lead Counsel***
Swathi Bojedla – ***Discovery Committee***
HAUSFELD LLP
1700 K Street NW, Suite 650
Washington, DC 20006
Tel: (202) 540-7200
Fax: (202) 540-7201
mhausfeld@hausfeld.com
sbojedla@hausfeld.com

Megan Jones – ***Settlement Committee & PSC Member***
Arthur Bailey – ***Discovery Committee***
HAUSFELD LLP
600 Montgomery Street, Suite 3200
San Francisco, CA 94111
Tel: (415) 633-1908
Fax: (415) 358-4980
mjones@hausfeld.com
abailey@hausfeld.com

Chris T. Hellums – ***Local Facilitating Counsel***

PITTMAN, DUTTON & HELLUMS,
P.C.

2001 Park Place N, 1100 Park Place
Tower

Birmingham, AL 35203

Tel: (205) 322-8880

Fax: (205) 328-2711

chrish@pittmandutton.com

William A. Isaacson – ***Settlement Committee & PSC Member***

PAUL WEISS

2001 K Street, NW

Washington, DC 20006-1047

Tel: (202) 223-7313

Fax: (202) 379-4937

wisaacson@bsfllp.com

Gregory Davis – ***Settlement Committee & PSC Member***

DAVIS & TALIAFERRO, LLC

7031 Halcyon Park Drive

Montgomery, AL 36117

Tel: (334) 832-9080

Fax: (334) 409-7001

gldavis@knology.net

Cyril V. Smith – ***Settlement Committee & PSC Member***

ZUCKERMAN SPAEDER, LLP

100 East Pratt Street, Suite 2440

Baltimore, MD 21202-1031

Tel: (410) 949-1145

Fax: (410) 659-0436

csmith@zuckerman.com

Kathleen Chavez – ***Settlement Committee & PSC Member***

FOOTE, MIELKE, CHAVEZ &
O'NEIL, LLC

10 West State Street, Suite 200

Geneva, IL 60134

Tel: (630) 797-3339

Fax: (630) 232-7452

kcc@fmcolaw.com

/s/ David J. Guin

David Guin – ***Co-Chair, Written Submissions Committee***

Tammy Stokes – ***Damages Committee***

GUIN, STOKES & EVANS, LLC

300 Richard Arrington Jr. Blvd. North

Suite 600/Title Building

Birmingham, AL 35203

Tel: (205) 226-2282

Fax: (205) 226-2357

davidg@gseattorneys.com

tammys@gseattorneys.com

Carl S. Kravitz – ***Expert Committee***
ZUCKERMAN SPAEDER LLP
1800 M Street NW, Suite 1000
Washington, DC 20036-5807
Tel: (202) 778-1800
Fax: (202) 822-8106
ckravitz@zuckerman.com

Richard Feinstein – ***Expert Committee***
Karen Dyer – ***Expert Committee***
Hamish P.M. Hume – ***Discovery Committee***
BOIES, SCHILLER FLEXNER LLP
1401 New York Avenue NW
Washington, DC 20005
Tel: (202) 237-2727
Fax: (202) 237-6131
rfeinstein@bsfllp.com
kdyer@bsfllp.com
hhume@bsfllp.com

Mindee Reuben
Lite DePalma Greenberg
1835 Market Street, Suite 2700
Philadelphia, PA 19103
Tel: (267) 314-7980
Fax: (973) 623-0858
mreubin@litedepalma.com

Nate Cihlar
Joshua Callister
Strauss & Boies
4041 University Drive, 5th Floor
Fairfax, VA 22030
Tel: [\(703\) 764-8700](tel:(703)764-8700)
Fax: (703) 764-8704
ncihlar@strauss-boies.com
jcallister@strauss-boies.com

Patrick Cafferty – ***Discovery Committee***
CAFFERTY CLOBES
MERIWETHER & SPRENGEL LLP
150 S. Wacker Drive, Suite 300
Chicago, IL 60606
Tel: (312) 782-4880
pcafferty@caffertyclobes.com

Bryan Clobes – ***Litigation Committee***
Ellen Meriwether – ***Written Submissions Committee***
CAFFERTY CLOBES MERIWETHER
& SPRENGEL LLP
2005 North Monroe Street
Media, PA 19063
Tel: (215) 864-2800
Fax: (215) 864-2810
bclobes@caffertyclobes.com
meriwether@caffertyclobes.com

Andrew Lemmon – Chair, Discovery
Committee
LEMMON LAW FIRM
15058 River Road
PO Box 904
Hahnville, LA 70057
Tel: (985) 783-6789
Fax: (985) 783-1333
andrew@lemmonlawfirm.com

Virginia Buchanan – Chair, Class
Certification Committee
LEVIN PAPANTONIO THOMAS
MITCHELL RAFFERTY &
PROCTOR, P.A.
316 South Baylen Street, Suite 600
Pensacola, FL 32502
Tel: (850) 435-7000
Fax: (850) 435-7020
vbuchanan@levinlaw.com

Douglas Dellaccio – *Litigation
Committee*
CORY WATSON CROWDER &
DEGARIS, P.C.
2131 Magnolia Avenue, Suite 200
Birmingham, AL 32505
Tel: (205) 328-2200
Fax: (205) 324-7896
ddellaccio@cwcd.com

Larry McDevitt – *Chair, Class
Certification Committee*
David Wilkerson – *Discovery
Committee*
VAN WINKLE LAW FIRM
11 North Market Street
Asheville, NC 28801
Tel: (828) 258-2991
lmcdevitt@vwlawfirm.com
dwilkerson@vwlawfirm.com

Edwin J. Kilpela, Jr.
Benjamin Sweet – *Litigation
Committee*
DEL SOLE CAVANAUGH STROYD
LLC
200 First Avenue, Suite 300
Pittsburgh, PA 15222
Tel: (412) 261-2393
Fax: (412) 261-2110
ekilpela@dsclaw.com
bsweet@dsclaw.com

Robert M. Foote – *Damages
Committee*
FOOTE, MIELKE, CHAVEZ &
O'NEIL, LLC
10 West State Street, Suite 200
Geneva, IL 60134
Tel: (630) 797-3339
Fax: (630) 232-7452
rmf@fmcolaw.com

Charles T. Caliendo – ***Class Certification Committee***
GRANT & EISENHOFER
485 Lexington Avenue
New York, NY 10017
Tel: (646) 722-8500
Fax: (646) 722-8501
ccaliendo@gelaw.com

Robert Eisler – ***Discovery Committee***
GRANT & EISENHOFER
123 Justison Street
Wilmington, DE 19801
Tel: (302) 622-7000
Fax: (302) 622-7100
reisler@gelaw.com

Daniel Gustafson – ***Litigation Committee***
Daniel C. Hedlund – ***Damages Committee***
GUSTAFSON GLUEK PLLC
120 South Sixth Street, Suite 2600
Minneapolis, MN 55402
Tel: (612) 333-8844
Fax: (612) 339-6622
dgustafson@gustafsongluek.com
dhedlund@gustafsongluek.com

Brent Hazzard – ***Litigation Committee***
HAZZARD LAW, LLC
447 Northpark Drive
Ridgeland, MS 39157
Tel: (601) 977-5253
Fax: (601) 977-5236
brenthazzard@yahoo.com

John Saxon – ***Litigation Committee***
JOHN D. SAXON, P.C.
2119 3rd Avenue North
Birmingham, AL 35203-3314
Tel: (205) 324-0223
Fax: (205) 323-1583
jsaxon@saxonattorneys.com

Lawrence Jones – ***Damages Committee***
JONES WARD PLC
The Pointe
1205 East Washington Street, Suite 111
Louisville, Kentucky 40206
Tel: (502) 882-6000
Fax: (502) 587-2007
larry@jonesward.com

Robert Methvin – *Chair, Settlement Committee*

James M. Terrell – *Class Certification Committee*

MCCALLUM, METHVIN & TERRELL, P.C.

The Highland Building
2201 Arlington Avenue South
Birmingham, AL 35205

Tel: (205) 939-0199

Fax: (205) 939-0399

rgm@mmlaw.net

jterrell@mmlaw.net

H. Lewis Gillis – *Co-Head Chair, Litigation Committee*

MEANS GILLIS LAW, LLC

3121 Zelda Court
Montgomery, AL 36106

Tel: 1-800-626-9684

hlgillis@tmgslaw.com

Dianne M. Nast – *Class Certification Committee*

NASTLAW LLC

1101 Market Street, Suite 2801
Philadelphia, PA 19107

Tel: (215) 923-9300

Fax: (215) 923-9302

dnast@nastlaw.com

Michael McGartland – *Class Certification Committee*

MCGARTLAND & BORCHARDT
LLP

1300 South University Drive, Suite 500
Fort Worth, TX 76107

Tel: (817) 332-9300

Fax: (817) 332-9301

mike@attorneysmb.com

David J. Hodge – *Chair, Settlement Committee*

MORRIS, KING & HODGE

200 Pratt Avenue NE
Huntsville, AL 35801

Tel: (256) 536-0588

Fax: (256) 533-1504

lstewart@alinjurylaw.com

Patrick W. Pendley – *Chair, Damages Committee*

Christopher Coffin – *State Liaison Committee*

PENDLEY, BAUDIN & COFFIN, LLP
Post Office Drawer 71

Plaquemine, LA 70765

Tel: (225) 687-6369

pwpendley@pbclawfirm.com

ccoffin@pbclawfirm.com

Edgar D. Gankendorff – *Co-Head
Chair, Litigation Committee*

Eric R.G. Belin – *Damages Committee*

PROVOSTY & GANKENDORFF,
LLC

650 Poydras Street, Suite 2700

New Orleans, LA 70130

Tel: (504) 410-2795

Fax: (504) 410-2796

egankendorff@provostylaw.com

ebelin@provostylaw.com

Richard Rouco – *Written Submissions
Committee*

QUINN, CONNOR, WEAVER,

DAVIES & ROUCO LLP

2 – 20th Street North, Suite 930

Birmingham, AL 35203

Tel: (205) 870-9989

Fax: (205) 870-9989

rrouco@qcwdr.com

Garrett Blanchfield – *Written
Submissions Committee*

REINHARDT, WENDORF &
BLANCHFIELD

E-1250 First National Bank Building

332 Minnesota Street

St. Paul, MN 55101

Tel: (651) 287-2100

Fax: (651) 287-2103

g.blanchfield@rwblawfirm.com

Jason Thompson – *Damages
Committee*

SOMMERS SCHWARTZ

One Towne Square, 17th Floor

Southfield, MI 48076

Tel: (248) 355-0300

jthompson@sommerspc.com

Subscriber Plaintiff Co-Lead Counsel and Committee Chairs and Members

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served using the CM/ECF system, which will send notification of such filing to counsel of record.

Dated: October 30, 2020

/s/ David J. Guin

David J. Guin